

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Karina Herrera	Team: Squad #9	CCRB Case #: 201807794	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 09/11/2018 1:38 PM	Location of Incident: In front of 1155 Broadway	Precinct: 83	18 Mo. SOL 3/11/2020	EO SOL 3/11/2020	
Date/Time CV Reported Tue, 09/11/2018 2:50 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 09/20/2018 11:05 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Carlos Pacheco	11444	956145	083 PCT
2. SGT John Diaz	00246	948884	083 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Matthew Foley	04644	943246	083 PCT
2. POM Paul Lattanzio	20938	963109	083 PCT
3. POM Tyler Ryan	13099	961220	083 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Carlos Pacheco	Abuse: Police Officer Carlos Pacheco stopped § 87(2)(b)	
B.POM Carlos Pacheco	Abuse: Police Officer Carlos Pacheco frisked § 87(2)(b)	
C.POM Carlos Pacheco	Abuse: Police Officer Carlos Pacheco damaged § 87(2)(b)'s property.	
D.SGT John Diaz	Abuse: Sergeant John Diaz issued a summons to § 87(2)(b)	

Case Summary

On September 11, 2018, Sgt. Matthew Foley of the 83rd Precinct filed the following complaint with the IAB Command Center on behalf of § 87(2)(b). The original log number #2018-35673 was forwarded to the Office of the Chief of Department (OCD). The following was referred to the CCRB via log number #2018-36107 and it was received on September 20, 2018.

At approximately 1:38 p.m. on September 11, 2018, Police Officer Carlos Pacheco and Police Officer Paul Lattanzio from the 83rd Precinct received a report of a firearm on Broadway and Dekalb Avenue in Brooklyn. Subsequently, Police Officer Pacheco stopped § 87(2)(b) in front of 1155 Broadway in Brooklyn (**Allegation A: Abuse of Authority – Stop,** § 87(2)(g)). Police Officer Pacheco handcuffed § 87(2)(b) and frisked him (**Allegation B: Abuse of Authority – Frisk,** § 87(2)(g)). § 87(2)(b) was holding his cellphone while he was handcuffed, and when Police Officer Pacheco retrieved it, he allegedly damaged it during that process (**Allegation C: Abuse of Authority – Property Damage,** § 87(2)(g)). Sergeant John Diaz and Police Officer Tyler Ryan from the 83rd Precinct eventually arrived at the incident location. Sergeant Diaz decided to transport § 87(2)(b) to the 83rd Precinct Stationhouse in Brooklyn so he could be issued a summons for disorderly conduct (**Allegation D: Abuse of Authority – Retaliatory Summons,** § 87(2)(g)).

On November 7, 2018, the NYPD Legal Department provided six Body-Worn Camera (BWC) videos in regards to this complaint (Board Review 01).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Carlos Pacheco stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Carlos Pacheco frisked § 87(2)(b)

It is undisputed that a female individual called 911 to report that she saw an individual with a firearm in his waist and then subsequently holding it (Board Review 02). The female caller described the suspect as a tall black male with a brown complexion who wore jeans and a black short sleeve shirt with a hood. The female caller provided the 911 operator her telephone number, but not her name. It is also undisputed that Police Officer Pacheco stopped and frisked § 87(2)(b) in regards to the 911 call. In dispute was whether he was justified in doing so.

Police Officer Pacheco stated that approximately three minutes after receiving the report of the firearm, he saw § 87(2)(b) on Broadway and Kossuth Place, which was approximately two blocks away from where the firearm was reported. Police Officer Pacheco believed § 87(2)(b) matched the description of the suspect with the firearm.

§ 87(2)(b) watched Police Officer Pacheco's police vehicle while Police Officer Pacheco drove past him. Police Officer Pacheco made a U-turn so he could continue observing § 87(2)(b). As Police Officer Pacheco was about to pass § 87(2)(b) a second time, § 87(2)(b) entered a grocery store. Police Officer Pacheco believed § 87(2)(b) entered the grocery store in order to hide and evade the police. § 87(2)(b) stood at the window of the grocery store and continued watching

Police Officer Pacheco's police vehicle. Police Officer Pacheco drove past the grocery store so that § 87(2)(b) could no longer see his vehicle, but he could still see § 87(2)(b). After the police vehicle passed the grocery store, § 87(2)(b) exited the store and continued walking on Broadway. Police Officer Pacheco exited his vehicle and stopped § 87(2)(b) at the incident location.

Police Officer Pacheco alleged that when he stopped § 87(2)(b) he could not see § 87(2)(b)'s waistband because his shirt was covering it. § 87(2)(b) did not have any noticeable bulges and Police Officer Pacheco did not know if § 87(2)(b) was holding anything at the time. § 87(2)(b) became upset, aggressive, and very angry about the stop. § 87(2)(b) placed his hands into his pockets and eventually took out his cellphone. Police Officer Pacheco handcuffed § 87(2)(b) in order to conduct a frisk on him because he believed § 87(2)(b) matched the description of a suspect with a firearm, so he was unaware if § 87(2)(b) had a firearm at the time.

A screenshot of § 87(2)(b) on the incident date was captured through Part 1 of Police Officer Pacheco's BWC footage (Board Review 03). § 87(2)(b) was wearing a black Mets baseball hat, a dark blue long-sleeve compression shirt with the sleeves rolled up to his elbows, and long black denim jeans. § 87(2)(b)'s shirt was tucked into his jeans and he was wearing a black leather belt around his waist. § 87(2)(b) was holding a black plastic bag and he was not wearing any kind of hood. § 87(2)(b) was not holding a firearm nor was a firearm in his visible waistband. He wore fitted clothing and did not appear to have any bulges.

None of the BWC footage obtained recorded any of the observations that were made prior to the stop (Board Review 01).

A telephone call from an anonymous source furnishing a general description and location of a man with a gun does not, by itself, constitute reasonable suspicion to stop and frisk anyone who happens to fit that description. Absent the observation of attendant circumstances which would provide objective, independent proof of the reliability and accuracy of the information, exigent circumstances or an unusually detailed and accurate description of the person to be stopped, we hold that such an anonymous tip is, as a matter of law, insufficient to warrant a forcible stop and frisk. People v. Bond, 116 A.D.2d 28, 499 N.Y.S.2d 724 (App. Div. 1986) (Board Review 04).

At the time Police Officer Pacheco stopped § 87(2)(b) he based his decision on a vague description provided by an anonymous 911 caller. While § 87(2)(b) may have fit parts of the general description, there were no detailed or accurate descriptions of the person to be stopped and no attendant or exigent circumstances to provide objective, independent proof of the reliability and accuracy of the information. Therefore, the 911 call was insufficient to warrant a forcible stop and frisk.

The observations made by Police Officer Pacheco prior to the stop were innocuous and provided no additional evidence that § 87(2)(b) was linked to the anonymous tip or that the tip was reliable.

§ 87(2)(b), § 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Carlos Pacheco damaged

§ 87(2)(b) s property.

It is undisputed that Police Officer Pacheco retrieved § 87(2)(b) s cellphone from his hands after he was handcuffed. In dispute is if Police Officer Pacheco damaged § 87(2)(b) s cellphone in that process.

§ 87(2)(b) stated that he was holding his cellphone when Police Officer Pacheco handcuffed him. Police Officer Pacheco attempted to grab § 87(2)(b) s cellphone from his hand while he was handcuffed, but § 87(2)(b) did not let go of it. While Police Officer Pacheco was still trying to retrieve § 87(2)(b) s cellphone from his hand, the cellphone screen allegedly cracked.

Police Officer Pacheco stated that § 87(2)(b) was holding his cellphone at the time he was handcuffed. Police Officer Pacheco explained that when an individual is stopped and handcuffed, they are not allowed to have anything in their hands. Police Officer Pacheco attempted to take § 87(2)(b) s cellphone from his hand, but § 87(2)(b) did not allow him to do so by holding the cellphone tightly. § 87(2)(b) eventually let go of his cellphone and Police Officer Pacheco was able to take it. Police Officer Pacheco said § 87(2)(b) s cellphone did not sustain any damages from this interaction.

Police Officer Pacheco's BWC partially recorded the moment when Police Officer Pacheco retrieved § 87(2)(b) s cellphone (Board Review 06). The video does not show Police Officer Pacheco's hand on § 87(2)(b) s cellphone, but the audio captures Police Officer Pacheco and § 87(2)(b) s interaction in that moment. At 1:47:35 p.m., a "crunch" sound is audible while § 87(2)(b) who is handcuffed, says, "Don't touch my phone." After the sound is heard, § 87(2)(b) is seen holding his cellphone and he accuses Police Officer Pacheco of damaging it. Police Officer Pacheco subsequently takes the cellphone from § 87(2)(b). When this portion of the video was shown to Police Officer Pacheco, he stated that the "crunch" sound was § 87(2)(b) s cellphone case peeling back and slapping against the cellphone during the struggle.

§ 87(2)(b) believed Police Officer Pacheco damaged his cellphone while Police Officer Pacheco believed § 87(2)(b) misinterpreted the sound the cellphone case made as damage to his property. None of the BWC footage showed § 87(2)(b) s cellphone at the time the sound was heard, nor did it show if § 87(2)(b) s cellphone was damaged prior to the police encounter, so the

§ 87(2)(b), § 87(2)(g)

Allegation (D) Abuse of Authority: Sergeant John Diaz issued a summons to

§ 87(2)(b)

It is undisputed that Sergeant Diaz instructed Police Officer Pacheco to issue § 87(2)(b) a summons for disorderly conduct after he was stopped for a 911 call regarding a firearm. In dispute is whether § 87(2)(b) was acting disorderly during the incident.

Police Officer Pacheco's BWC recorded § 87(2)(b)'s reaction to being stopped (Board Review 06). At 1:46:13 p.m., Police Officer Pacheco stopped § 87(2)(b) and instructed him to move in front of a store, and § 87(2)(b) did so. At 1:46:53 p.m., Police Officer Pacheco turned § 87(2)(b) around to handcuff him and frisk him, and although § 87(2)(b) asked, "For what," he allowed Police Officer Pacheco to do so without any physical resistance. While being handcuffed at 1:46:57 p.m., § 87(2)(b) generally shouts, "Yo somebody record this for me, son. They are arresting me for no reason." No pedestrians appear to be gathered at this time. Throughout the interaction, § 87(2)(b) verbally defends himself against the officers by asking "What did I do? I was walking down the block." At 1:47:40 p.m., § 87(2)(b) yells at Police Officer Pacheco when he accuses him of damaging his cellphone. Approximately less than five pedestrians stop to observe the incident at this time, but § 87(2)(b) does not communicate with them and vice-versa. The pedestrians maintain an appropriate distance from § 87(2)(b) and the officers, and they do not appear to be verbally communicating with the officers.

Sergeant Diaz explained that § 87(2)(b) was disorderly because he was irate, he was screaming, and he was upset about the stop. He said, § 87(2)(b) was giving the officers a very hard time. He was misleading them. He was very tumultuous. I remember there were people walking past. They were stopping to stare...causing a scene. He was impeding the officers from conducting a proper investigation of a very serious crime." When asked why § 87(2)(b) was not issued a summons at the incident location, Sergeant Diaz said, "I was fearing for my officers' safety as well as my own. I made the decision to bring him back to the precinct, which we are allowed to do," and then he added, "The stationhouse is controlled. We don't have civilians to worry about. We don't have all different kinds of elements to worry about. It's safer to be done that way." When asked what made him fear for the officers' safety, Sergeant Diaz said, "He was yelling very loudly. He was very angry. He was very irate. He was a pretty big guy," and then he added, "It's something that I felt was a safety concern. I wanted to avoid a force situation where maybe tempers are rising and the next thing you know he does something that my officers may perceive as a threat physically."

Summons #§ 87(2)(b) was issued to § 87(2)(b) by Police Officer Pacheco on the incident date (Board Review 07). He was charged with disorderly conduct subsection (1), engaging in fighting, or violent, tumultuous or threatening behavior. The summons notes that § 87(2)(b) was behaving aggressively on a public sidewalk, causing a crowd to gather and said, "You better not touch me."

According to New York Penal Law 240.20, an individual is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof: (1) he engages in fighting or in violent, tumultuous or threatening behavior (Board Review 08).

In People v. Baker, it was decided that civilian witnesses, who gather to observe a police action on the basis of their curiosity, is not a threat to public harm, especially if the witnesses do not verbally or physically involve themselves in the police action. The case further states that a verbal exchange between a single civilian and officers does not constitute public harm if the civilian's statements are exclusively targeted at the officers, who are trained to defuse situations with emotionally distraught individuals. People v. Baker, 20 NY3d 354 (2013) (Board Review 13).

§ 87(2)(b) did not at any point physically resist the officers from stopping and frisking him, or otherwise engage in fighting or in violent, tumultuous behavior. Although § 87(2)(b) had generally shouted that he wanted someone to record what was happening, he did not make any further statements to the public throughout the incident, and he did not at any point incite conversations with any specific civilians. The public inconvenience described by Sergeant Diaz originated from his officers' actions towards § 87(2)(b) – not § 87(2)(b)'s behavior towards the public. Furthermore, the civilians who gathered to observe the police action did not verbally or physically involve themselves in the police action and therefore, were not a threat to public harm. Lastly, video footage corroborates that § 87(2)(b)'s exchange with the officers was only verbal, expressing his displeasure with the police encounter. This does not constitute public harm as his statements were targeted exclusively at the officers, who are trained to defuse emotionally charged situations.

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 09).
- Sergeant Diaz has been a member of service for eight years and has been a subject in five CCRB complaints and ten allegations, none of which were substantiated. One of his cases, case #201809632, is still pending investigation. § 87(2)(g)
- Police Officer Pacheco has been a member of service for five years and has been a subject in three CCRB complaints and nine allegations, of which three were substantiated and one of which reflects a pattern:
 - Case #201510512 involved substantiated allegations of threat of force, improper summons, and discourtesy word against Police Officer Pacheco. The Board recommended Command Discipline B and the NYPD imposed Command Discipline B.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- § 87(2)(b)
- As of July 18, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (Board Review 12).

Squad No.: _____9_____

Investigator: _____

Signature	Print Title & Name	Date
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Squad Leader: _____

Signature	Print Title & Name	Date
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Reviewer: _____

Signature	Print Title & Name	Date
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